



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 31:111. Sales and purchases for resale.

5 RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.280, 139.290, 139.300,
6 139.430, 139.440, 139.760, 139.990

7 STATUTORY AUTHORITY: KRS 131.130(1)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the
9 Department of Revenue to promulgate administrative regulations necessary for the administration
10 and enforcement of all tax laws in Kentucky. This administrative regulation establishes
11 requirements to consolidate and clarify various provisions of the sales and use tax law as they
12 relate to the authorized issuance of resale certificates by purchasers and acceptance thereof by
13 retailers and sellers.

14 Section 1. A resale certificate shall either be a "single purchase certificate" or a "blanket
15 certificate". (1) A "Single purchase certificate" shall include an itemization by the purchaser of the
16 tangible personal property, digital property, or services specifically numerated in KRS 139.200(g)
17 through (q) according to the provisions of KRS 139.260(3)[property] to be purchased. A single
18 purchase certificate may only be used for a single purchase of applicable property and
19 services[tangible personal property or digital property] for resale and shall not be used for
20 subsequent purchases.

(2) A "Blanket certificate" shall include a general description by the purchaser of the kind of tangible personal property, digital property, or services specifically numerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3)~~property~~ property to be purchased for resale in the regular course of business. A purchaser who has executed a blanket certificate shall not be required to execute additional certificates of resale for individual purchases if:

(a) There is no change in the character of the purchaser's operation; and

(b) The purchases are of applicable property and services~~[tangible personal property or digital property]~~ of the kind usually purchased by the purchaser for resale.

Section 2. The resale certificate issued by the purchaser shall be in the form of either the "Resale Certificate", Form 51A105, the "Streamlined Sales and Use Tax Agreement - Certificate of Exemption", Revenue Form 51A260, or the Multistate Tax Commission's "Uniform Sales and Use Tax Exemption/Resale Certificate - Multijurisdiction".

Section 3. If the purchaser is not required to hold a permit because the purchaser is a nonresident purchaser not required to register in Kentucky, the purchaser may issue a fully completed:

(1) Streamlined Sales and Use Tax Agreement - Certificate of Exemption (Revenue Form 51A260); or

(2) Resale Certificate (Revenue Form 51A105). If the purchaser issues a "Resale Certificate", Form 51A105, the purchaser shall note on the face of the certificate that the purchaser is a nonresident purchaser not required to register and obtain a permit in Kentucky. The certificate shall bear the purchaser's signature, name, address, and any other information requested on the form. The purchaser shall clearly mark on the certificate whether it is a single purchase certificate or a blanket certificate.

1 Section 4. (1) If the retailer or seller has not obtained a completed resale certificate in a timely
2 manner according to the provisions of KRS 139.270, the burden of proving that a sale is exempt
3 as a sale for resale shall be upon the retailer or seller. The retailer or seller may offer proof to the
4 department that the sale in question is not subject to tax in accordance with 103 KAR 1:010.

5 (2)(a) For example, if a retailer or seller only receives a completed resale certificate from a
6 restaurant business for silverware [~~and other table settings only~~] after the 120 day period required
7 under KRS 139.270, the burden of proof shall be considered "not met" and the retailer or seller
8 shall remain liable for the tax. The items in this example are for use within the restaurant business
9 rather than for resale.

10 (b) If the retailer or seller receives a completed resale certificate in the course of a department
11 audit for purchases of disposable utensils[~~eups~~] from the same restaurant business, the burden of
12 proof shall be considered "met" because the product is of the type resold in the normal course of
13 the restaurant business.

14 Section 5. Forms. The forms listed herein may be inspected, copied, or obtained, subject to
15 applicable copyright law, at:

16 (1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;
17 [~~40620~~];

18 (2) At a Kentucky Taxpayer Service Center during business hours; or

19 (3) On the department website at <http://revenue.ky.gov>.[-]

103 KAR 31:111

APPROVED BY AGENCY:



DANIEL P. BORK, COMMISSIONER

Department of Revenue

Finance and Administration Cabinet

JUNE 6, 2018

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on July 25, 2019, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov (email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 31:111

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to remove outdated regulatory language and information currently contained in the regulation. Statutory references are updated.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by specifying the types of property and services eligible for purchase under the resale certificate, adding KRS 139.200 to the "RELATES TO" section, and clarifying the example provided.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information

contained therein.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 31:111

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenues are expected to be generated for any state or local government agency by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: